

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

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IN THE MATTER OF

EXCHANGE APPLICATION

NO. 112

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MEMORANDUM DECISION

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Exchange Application No. 112 was filed by the Richfield Irrigation and Canal Company and nine other water users to cover the release of water from Clear Creek into the Sevier Bridge Reservoir in exchange for retaining water in the Piute Reservoir for use on the lands of the applicants. This application was protested by the Delta Canal Company, et al, and a hearing held in Richfield on January 17, 1964. Since this application for exchange involves the same problem as the pending A to L lawsuit, it was decided to hear this matter so that if there is to be any appeal from this decision it could be consolidated with the pending lawsuit.

The contention of the applicants is that the water involved was decreed to them by the Cox Decree and that under this right water has been released down the channel of Sevier River to the Sevier Bridge Reservoir where, by exchange, they have stored an equivalent amount in the Piute Reservoir. They contend this has been the practice in the past even though no exchange or other document has been filed to describe this usage nor any arrangements made with the owners of the lower reservoir for use of storage space. They also contend that if and when there is water which they have formerly diverted but do not wish to continue to divert that they would exchange such waters in the manner described above. They contend that past practice has kept intact the right awarded in the Cox Decree.

The protestants contend that the water covered by this proposed exchange under either of the above premises is their water under their own storage right and, therefore, there is no water available for exchange. They contend that the water not consumed by the applicant but reaching the natural channel was a part of their inherent storage right and, therefore, cannot be exchanged by the companies. They further contend that no arrangement of any kind exists for storage of such waters in Sevier Bridge Reservoir. The following decision of the State Engineer is based upon the several factors involved and heard by him in this matter.

From the evidence presented at the hearing, the State Engineer determines that there would be water awarded the applicants by the Cox Decree for the period as provided in the Decree which could be exchanged. The amount would be limited to that water which had been consumed because of diversion prior to the exchange. It is, therefore, the decision of the State Engineer that Exchange Application No. 112 be APPROVED for only that amount which the applicants can prove as stream depletion resulting from current irrigation practices including current consumptive uses and soil storage for later uses. Any water which cannot meet this classification is declared to be the water owned by downstream users.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 7th day of February, 1964.



Hubert C. Lambert  
ACTING STATE ENGINEER

HCL/1e

cc: Richfield Irrigation & Canal Co.  
Ken Chamberlain  
Edward W. Clyde

cc: Sam Cline  
Thorpe Waddingham  
W. C. Cole  
Keith B. Christensen